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IN THE

Supreme Court of the United States

JANUARY TERM, 1965

NO. 833

LYON TYLER MATTHEW, ET AL, PETITIONERS,

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners Lyon Tyler Matthew and Lewis N. Hill pray that a Writ of Certiorari issue to review the judgment of the Court of Appeals for the Fifth Circuit entered in the above cause on July 28, 1964, reversing the decision of the Tax Court of the United States.

OPINIONS BELOW

The opinion of the Tax Court of the United States is reported in 38 T. C. 417, and at R. 365-414, and nine (9) copies of the record as printed for the use of the Court below are filed with this Petition. The opinion of the Court of Appeals (R. 448-457)

is reported in 335 F. 2d 231 and is printed in Appendix A hereto, *infra*, pp. 11-19.

JURISDICTION

The judgment of the Court of Appeals was entered on July 28, 1964, Appendix A, p. 21. Rehearing was denied on October 19, 1964 (R. 493). The jurisdiction of this Court is invoked under 28 USC Section 1254(1).

QUESTIONS PRESENTED

1. Whether the existence of executive agreements between the United States and the United Kingdom precludes these Petitioners from the exemption from United States income taxes for which they otherwise qualify as bona fide residents of a foreign country under 26 USC Section 911(a)(1).

2. Whether the holding of the Court of Appeals, that these Petitioners — civilian employees of a civilian contractor — are persons subject to the Uniform Code of Military Justice, is in conflict with the applicable decisions of this Court.

STATUTE, REGULATIONS AND EXECUTIVE AGREEMENTS INVOLVED

The statutory provision involved is Section 911(a)(1) of the Internal Revenue Code, 26 USC Section 911(a)(1), and is printed in Appendix B, *infra*, p. 22. The Regulations involved are United States Treasury Regulations, Section 1.911(a)(2), 26 CFR 1.911 and Section 1.871-2(b), 26 CFR 1.871, and are printed

in Appendix C, *infra*, pp. 23-24. The executive agreements involved are as follows: Agreement between the United States and the United Kingdom with respect to the Bahamas dated July 21, 1950, 1 U. S. Treaties and Other International Agreements 545, TIAS 2099, printed in Appendix D, *infra*, pp. 25-54. Agreement between the United States and the United Kingdom with respect to Ascension Island dated June 25, 1956, 7 U. S. Treaties and Other International Agreements 1999, TIAS 3603, printed in Appendix E, *infra*, pp. 55-78.

STATEMENT

Petitioners[1] are citizens of the United States who filed their federal income tax returns for the years concerned[2] with the District Director of Internal Revenue, Jacksonville, Florida (R. 367).

The deficiencies in income tax result from a determination by the Respondent that Petitioners were not exempted from taxation under 26 USC Section 911(a)(1).

These cases were consolidated for trial in the Tax Court where these Petitioners were held to be bona fide residents of a foreign country exempt from tax under 26 USC Section 911(a)(1) (R. 387, 395, 401, 413). The Court of Appeals reversed, concluding that the Executive Agreements[3] between the United States and

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[1] Only Petitioners Lyon Tyler Matthew and Lewis N. Hill are represented by undersigned counsel.

[2] The years involved and the income tax deficiencies determined are as follows (R. 367):

Petitioner	*Year*	*Deficiency*
Lyon T. Matthew	1956	$ 565.68
	1957	896.70
Lewis N. Hill	1956	783.00
	1957	1,190.17
	1958	1,311.87

[3] These Agreements in full text are set forth as Appendix D and Appendix E, *infra*. Only the Bahamas Agreement of July 21, 1950 is pertinent to all three taxpayers since Petitioner Hill did not at any time work or live on Ascension Island.

the United Kingdom precluded foreign residence (Appendix A, p. 19). On denial of petition for rehearing by order of the Court of Appeals dated October 19, 1964, this Petition for Writ of Certiorari is sought.

Jurisdiction in the Tax Court was under 26 USC Section 7442. Jurisdiction in the Court of Appeals was based on 26 USC Section 7482.

Petitioners were civilian employees of Pan American World Airways, Inc., Guided Missiles Range Division, (hereafter called Pan Am), working at various sites and living in the Bahama Islands,[4] and Antigua[5] and Ascension Islands, all British colonies (R. 367, 375, 376). These tracking sites were a part of the Joint Long-Range Proving Ground established in May, 1950 as a testing range for guided missiles (R. 368). Under contracts between Pan Am and the Air Force, the operation and management of these tracking stations were committed to civilian employees of Pan Am (R. 449).

On July 21, 1950 an Executive Agreement with respect to the Bahamas Long Range Proving Ground was effected between the United States and the United Kingdom of Great Britain and Northern Ireland for the joint use by these countries of Bahamas territory in testing guided missiles (Appendix D, pp. 25-54). On June 25, 1956 a further Agreement between these Powers was effected with respect to Ascension Island in the South Atlantic Ocean (Appendix E, pp. 55-78). These Agreements were effective for a period of 25 years and thereafter until terminated on one year's notice by either party (Art. XXVI of the Agreements, Appendix D, p. 47, Appendix E, p. 77).

Petitioners established bona fide residence in a foreign country

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[4] Grand Bahama, Eleuthera, San Salvador and Mayaguana.

[5] Enjoying in 1958 an estimated population of 52,450 persons, Antigua produces and exports sugar, cotton, bananas and pineapples (R. 376). Petitioner Hill and his family at time of trial resided at Gambles Terrace, St. Johns, Antigua (R. 391, 392).

requisite for tax exemption under 26 USC Section 911(a)(1) before the Tax Court (R. 413). Each had been living in the colonies of the United Kingdom for more than 5 years and continued so at time of trial (R. 385, 388, 400, 406, 407). They worked in supply and accounting, and their foreign service with Pan Am was unlimited in duration (R. 377, 381, 388, 396). Each intended to make a career of his foreign service and this intent never changed (R. 381, 393, 396). They attempted to take their families with them in their foreign service, and sometimes succeeded while at other times circumstances prevented (R. 382, 389, 391-392, 397). They made friends among the local people and assimilated themselves into the British communities (R. 137-139, 151, 152, 213, 214, 217, 218, 225, 228, 229, 278, 281, 286, 287, Appendix A, p. 15).

On these and other significant facts and circumstances of record the Court of Appeals concluded it could not disturb the fact findings of the Tax Court nor its construction of 26 USC Section 911(a)(1) (Appendix A, p. 15). The Court of Appeals reversed on a single conclusion, stating (Appendix A, p. 15):

> Our reversal of this case rests on our conclusion that, as a matter of law, the treaties between the two governments kept the presence of these civilian employees from ever ripening into residence.

REASONS FOR GRANTING THE WRIT

The reasons relied on for the allowance of the writ are as follows:

First: The public importance of the question of federal law decided by the Court below.

Second: Conflict of the decision below with the applicable decisions of this Court.

1. *Public Importance.* — The Court below has construed these executive agreements as substantial and sweeping British grants of territorial sovereignty and jurisdictional rights and immunities which, under these agreements, the United Kingdom did not transfer or relinquish and, without Parliamentary approval, probably could not have disposed of. Examples of such construction are as follows:

(a) The Court below has construed these agreements as a "virtual cession of territory to the United States"[6] over the specified sites, whereas the Agreements carefully avoid any reference to transference of British sovereignty over these British island colonies, and permit only limited use of these areas for a specific purpose and time, as the Powers may jointly agree.

(b) The Court below has construed these Agreements as granting exemption "from income tax imposed upon alien residents of the islands"[7], whereas the agreements specifically provide that these employees "shall be liable to pay [no] income tax in the Bahama Islands [Ascension Island], except in respect of income derived from the Bahama Islands [Ascension Island]",[8] so that Petitioners as resident aliens continued liable to pay Bahamas (Ascension) income tax when and if such a tax was enacted by the Bahamas (Ascension) Government.

(c) The Court below has construed these Agreements as granting "complete or partial immunity from the operation

[6] Appendix A, p. 15
[7] Appendix A, p. 16
[8] Appendix D, p. 41; Appendix E, p. 71

of local laws and local governmental authorities" by holding each of these Petitioners to be " 'a person *** who is *** subject to the United States Uniform Code of Military Justice' "[9], whereas, as civilian employees of Pan Am, a civilian contractor, these Petitioners were not subject to court-martial jurisdiction and could not be tried for offenses under military law. *Reid v. Covert*, 354 U. S. 1, 35 (1957). Thus, these Petitioners were subject to trial only by the local British Island government, there being no civil court of the United States authorized to sit in the Bahama Islands or Ascension.[10]

Questions of British sovereignty, power to tax and criminal jurisdiction over citizens of the United States thus raised in the decision below are sensitive areas of vital importance meriting review by this Court.

Perhaps of even greater significance, the Court below through its construction of these administrative agreements with the United Kingdom has nullified the plain language of the tax exemption statute, thereby denying the tax exemption not only to the hundreds of our citizens who, like these Petitioners, reside and are employed in the foreign countries[11] involved in the Joint Long-Range Proving Ground, but potentially to our many citizens employed and residing in numerous other foreign countries of the world also having international pacts with the United States.[12]

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[9] Appendix A, p. 17

[10] Appendix D, p. 32; Appendix E, p. 61

[11] The United Kingdom of Great Britain and Northern Ireland, the Dominican Republic and Brazil.

[12] For example, the North Atlantic Treaty Status of Forces Agreement, 4 U. S. Treaties and Other International Agreements 1792, TIAS 2846, signed in London on June 19, 1951, and joined in by Belgium, Canada, Denmark, France, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal and the United Kingdom; and the Convention On the Rights and Obligations of Foreign Forces and Their Members in the Federal Republic of Germany, 6 U. S. Treaties and Other International Agreements 4278, TIAS 3425, jointly executed by the United States, the United Kingdom, France and West Germany in 1954.

This widespread public application of the decision below, coupled with its manifest and substantial misconstruction of these international agreements, clearly points to the urgent need of review by the Court.

2. *Conflict.* — We submit that the decision below is in conflict with the applicable decisions of this Court in *Reid v. Covert, supra; Kinsella v. United States ex rel Singleton*, 361 U. S. 234 (1960); *Grisham v. Hagen*, 361 U. S. 278 (1960); and *McElroy v. United States ex rel Guargliardo*, 361 U. S. 281 (1960).

By those cases this Court held unconstitutional the trial by court-martial of civilian dependents and civilian employees of the Armed Forces for capital or non-capital offenses committed in foreign countries in peacetime. Executive agreements existed in those cases between the United States and the foreign country, and military courts exercised jurisdiction over civilian nationals of the United States under the provisions of the Uniform Code of Military Justice as implemented by these executive agreements. In *Reid v. Covert, supra*,[13] this Court said:

> The obvious and decisive answer to this, of course, is that no agreement with a foreign nation can confer power on the Congress, or any branch of Government, which is free from the restraints of the Constitution.

and at p. 35, quoted from Winthrop, *Military Law and Precedents* (2d Reprint 1920), 107, as follows:

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[13] The agreement in *Reid v. Covert* between the United States and Great Britain was Executive Agreement of July 27, 1942, 57 Stat. 1193. In the companion case of *Kinsella v. Krueger*, the Agreement between the United States and Japan was Administrative Agreement of February 28, 1952, 3 U. S. Treaties and Other International Agreements 3341, TIAS 2492.

"a statute cannot be framed by which a civilian can lawfully be made amenable to the military jurisdiction in time of peace."

In direct conflict with the applicable decisions of this Court, the decision below holds each of these civilian Petitioners to be: [14]

'*** a person *** who is *** subject to the United States Uniform Code of Military Justice'.

CONCLUSION

Wherefore, it is respectfully submitted that this petition should be granted.

Respectfully submitted,

January 14, 1965

LUCIUS A. BUCK
Counsel for Petitioners

CERTIFICATE OF SERVICE

I, LUCIUS A. BUCK, the attorney for Lyon Tyler Matthew and Lewis N. Hill, Petitioners herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 14th day of January, 1965, I served copies of the foregoing Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit on the parties thereto, as follows:

1. On the United States, by mailing a copy thereof, in a duly

[14] Appendix A, p. 17

addressed envelope, with air mail postage prepaid, to the Solicitor General, Department of Justice, Washington 25, D. C.

2. On the Commissioner of Internal Revenue, by mailing a copy thereof, in a duly addressed envelope, with air mail postage prepaid, to his attorney of record, the Hon. Louis F. Oberdorfer, Esquire, Assistant Attorney General, Tax Division, U. S. Department of Justice, Washington 25, D. C.

s/ Lucius A. Buck

LUCIUS A. BUCK
Counsel for Petitioners

APPENDIX A

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 20796

COMMISSIONER OF INTERNAL REVENUE, PETITIONER,

v.

LYON TYLER MATTHEW, ET AL., RESPONDENTS.

PETITIONS FOR REVIEW OF DECISIONS OF THE TAX COURT OF THE UNITED STATES, (DISTRICT OF FLORIDA).

(JULY 28, 1964.)

Before TUTTLE, Chief Judge, and BROWN, Circuit Judge, and BREWSTER, District Judge.

BROWN, Circuit Judge: The question in this case is whether each of the three Taxpayers was a "bona fide resident of a foreign country or countries," 26 USCA §911(a)(1), during the pertinent tax years running from 1956 through 1958. The Tax Court held that each was. 38 T.C. 417. We disagree and reverse.

Taxpayers[1] during the years concerned were employees of Pan Am[2] at various United States Auxiliary Air Force Bases situated on British Islands in the Atlantic Ocean.[3] Pan Am, under a yearly contract, was a civilian contractor of the United States Air Force Missile Test Center at Patrick Air Force Base, some 18 miles from Cape Kennedy, Florida, the Atlantic Long Range Guided Missile launching station. These operations, now eclipsed by the spectacular orbital launchings of manned spacecraft from the Cape, were part of the post-World War II legislation to develop and test military missiles.[4] Construction at Down-Range Missile Tracking Stations began early in 1951. For all practical purposes, the operation and management of these down-range tracking stations, though nominally commanded by an Air Force officer, were committed to Pan Am through its civilian employees.

The Government attacks the Tax Court decision primarily on the ground that the nature of this employment at remote, sometimes almost uninhabited or uninhabitable islands, demonstrated that apart from this governmentally initiated, controlled, and operated military project, none of the Taxpayers would have ever sought out employment there.[5]

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[1] In our approach to the case, the evidentiary details as to each individual are unimportant. Consequently, we refer indiscriminately to them as Taxpayer or Taxpayers.

[2] Pan American World Airways, Inc.

[3] The Islands were Grand Bahama, San Salvador, Mayaguana and Ascension. These Bases were established pursuant to treaties between the United States and the United Kingdom in 1950 and 1956.

[4] In May 1950, the Joint Long-Range Proving Ground became the sole responsibility of the Air Force. The first missile was launched on July 24, 1950, "when a German V-2 rocket carrying an Army WAC Corporal missile as a second stage roared from its pad." We dealt with a mundane problem related to this less spectacular program in Blake Constr. Co. v. United States, 5 Cir., 1958, 252 F.2d 658.

[5] The following is typical of the facts emphasized by the Government. Ascension Island, 4401 nautical miles from Patrick Air Force Base, is a volcanic, hilly island, roughly about seven miles in diameter, with little vegetation or industry. It has no local commercial transportation and no commercial air service. There are no hotels. Of the 200 residents, 50 are Britishers, the balance of Indian descent. One Taxpayer described it as

On the basis of this, the Government then contends that this Taxpayer does not meet the person Congress described as a "bona fide resident." This is because, so the argument runs, Congress enacted the tax exemption in order to encourage, promote and stimulate the foreign trade of our country. In support of this thesis, it emphasizes what we and others have said. Thus in *Swenson v. Thomas*, 5 Cir., 1947, 164 F.2d 783, in discussing the predecessor of §911(a)(1), we commented: "It is demonstrable from the history of that legislation that the exemption was made in the interest of foreign trade, to induce Americans to accept employment abroad and put American business on an equality with foreign competitors. * * * The change was made not because of a reversal [in 1942] of the original purpose to encourage foreign employment of Americans, but to so tighten the law as to require bona fide residence * * *."[6]

"more isolated than anything you ever want to be on. * * * There is no place to go, no where to come back from." The 339 Pan Am American civilian employees lived in barracks and quonset huts on the Base. Mayaguana Island, 544 nautical miles from Patrick, formed of coral sandstone, seven miles wide and 28 miles long, has a population of 700, all natives, with farming and fishing as its major occupations. It is without commercial transportation, housing or hotels. The 9 Pan Am civilian employees lived in barracks on the base. San Salvador, 414 miles from Patrick, formed of coral limestone, 12 miles long, has a population of less than 900 with all but one being natives. No products are manufactured for export. It is without commercial transportation, hotels, and private housing facilities. The 213 Pan Am civilian employees lived in barracks on the base which was fenced in and guarded. Grand Bahama, 152 miles from Patrick, is bigger (83 miles long) and more heavily populated (5800), but there was little farming, commercial activity with "unskilled labor * * * available at three shillings per hour," and all but about 1% of the population are natives. The 315 Pan Am civilian employees lived in barracks on a base fenced in and guarded. For about a month the wife and children of one of the Taxpayers lived in "a small shack which had no running water. And with no glass windows * * * no electric lights * * * [it had] an outside toilet some 75 to 100 feet from the house."

[6] The Government points to similar comments in Downs v. Commissioner, 9 Cir., 1948, 166 F.2d 504, 507, 509; Commissioner v. Fiske's Estate, 7 Cir., 1942, 128 F.2d 487; Meals v. United States, D.C.Cal., 1953, 110 F.Supp. 658, 660; White v. Hofferbert, D.C.Md., 1950, 88 F.Supp. 457, 465; and also H. Rep. No. 1, 69th Cong., 1st Sess., 7 (1939-1 Cum.

Of course this thesis rests on the unquestioned and universally recognized purpose of Congress in enacting the 1942 forerunner of §911(a)(1) to eliminate the many abuses which had arisen under the former law which required, not presence *in* a foreign country, so much as absence *from* the United States.[7] *Downs v. Commissioner*, 9 Cir., 1948, 166 F.2d 504, 508, cert. denied, 1948, 334 U.S. 832, 68 S.Ct. 1346, 92 L.Ed. 1759; *Souza v. Commissioner*, 1960, 33 T.C. 817, 824; S. Rep. No. 781, 82d Cong., 1st Sess., 52; *Meals v. United States*, 1953, N.D. Calif., 1953, 110 F.Supp. 658, 660-661; and *Swenson v. Thomas*, 5 Cir., 1947, 164 F.2d 783, 784.

This argument, in our view, is neither persuasive nor sufficient. Despite the difficulties in applying the term "bona fide residence," characterized by some as "slippery"[8] and as being as variable as Joseph's coat of many colors[9] and by others as "elusive,"[10] we think the promoting-foreign-trade-test offers no real guide or help. Modern business is complex and the activities which companies or individuals regard as commercially feasible or profitable

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Bull. (Part 2) 315, 320), accompanying the Bill enacted as Section 213(b)(14), Revenue Act of 1926, c. 27, 44 Stat. 9, a forerunner of §911(a)(1) of the 1954 Code. "In an endeavor to take one further step toward increasing our foreign trade it is recommended in this paragraph [Section 213(b)(14)] that there shall be excluded from gross income in the case of our citizens employed abroad in selling our merchandise amounts received as salary or commission for the sale for export of tangible personal property produced in the United States * * *." See also S. Rep. No. 52, 69th Cong., 1st Sess., 20-21 (1939-1 Cum. Bull. (Part 2) 332, 348); H. Conference Rep. No. 356, 69th Cong., 1st Sess., 33 (1939-1 Cum. Bull. (Part 2) 361, 364).

[7] Mere physical presence in a foreign country for 510 full days out of 18 consecutive months qualifies for a maximum exclusion of $20,000 under §911(a)(2), which was enacted in 1951 by §321(a)(2) Revenue Act of 1951, ch. 521, 65 Stat. 452. Taxpayer does not meet this test in any of the years here involved.

[8] Commissioner v. Swent, 4 Cir., 1946, 155 F.2d 513, 515.

[9] "Residence * * * has an evasive way about it, with as many colors as Joseph's coat," Weible v. United States, 9 Cir., 1957, 244 F.2d 158, 163.

[10] Souchurek v. Commissioner, 7 Cir., 1962, 300 F.2d 34, 37.

are varied. Consequently, we think it would be a very rare case indeed in which a Court, as are we here, could be urged to hold as a matter of law that neither Pan Am nor its civilian employees could have considered this a corporate or individual vocation pursued as American traders with a profit motive.

In similar vein, we would have to conclude that if the detailed circumstances concerning the activities of these Taxpayers, their efforts to assimilate themselves into whatever community life was available in these primitive societies, the indefinite extent and duration of their service and employment, and like factors were significant, we could not displace the fact findings of the Tax Court. They are certainly not clearly erroneous, F.R.Civ.P. 52 (a); Int.Rev. Code of 1954, §7482(a), 26 USCA §7482(a), whatever might have been our evaluation of them were we the trier of this mixed question of fact and law.

Our reversal of this case rests on our conclusion that, as a matter of law, the treaties between the two governments kept the presence of these civilian employees from ever ripening into residence.

There was, first, a virtual cession of territory to the United States during the life of the treaty. The United Kingdom, in collaboration with Island authorities, obligated itself to "provide * * * such Sites for the purpose of the operation of the Long Range Proving Ground as may * * * be necessary." By a provision that "access to the Sites shall not be permitted to persons not officially connected with" the Missile Testing Program except by joint consent of the senior British and American representatives, the territory, comprising a site was effectually withdrawn from the local government. This was in no sense confined to the geographical boundary of the sites, since extensive rights were granted for activities within the "Range Area."[11] Likewise ac-

[11] This was defined as being "* * * that part of the Long Range Proving Ground which lies within the territory of [the specific island], including the territorial waters thereof."

corded was the vicarious right of condemnation of entering upon, inspecting and "taking any necessary measures" on off-site land if required "to improve sanitation and protect health" on the Sites.

The full sweep of such extraterritorial rights was reflected by treaty provisions concerning personnel. These provisions also revealed a purpose to treat Pan Am's civilian employees as something other than (a) local residents subject to local authorities or (b) immigrant-aliens subject to local law. Thus, the treaties expressly provided that "the immigration laws of [the named] island shall not operate or apply so as to prevent admission * * * of any person * * * employed by, or under a contract with, either the Government of the United States * * * or a contractor, in connection with the establishment, maintenance, or use of the * * * Proving Ground." This extraordinary privilege was coextensive with employment by Pan Am on the Missile project since the United States bound itself to notify the local authorities of any change of status for deportation of such persons by the United States if required. Likewise, such employees were exempt from import, excise, consumption or other tax, duties or imposts of the local governments with respect to personal belongings imported by United States citizens or purchased by them at Post Exchange or Commissary Stores at the site. Perhaps more important, in this day and world of high taxes, the employees were exempted from income tax imposed upon alien residents of the islands or citizens of the islands with respect to income earned in "connection with the establishment, maintenance, or use of the Long Range Proving Ground." The tax exemption also covered the "ownership or use of property which is within a Site, or situated outside [the named] island." These privileges were likewise extended to the contractors, subcontractors, or beneficial owners thereof and included specifically any "income tax * * * in respect of any profits derived under a contract * * * with * * * the United States" or any "license [tax] in respect of any service or work for the * * * United States."

Even more vital, these civilian employees had a complete or partial immunity from the operation of local laws and local governmental authorities. Classified as "a person * * * who is * * * subject to the United States Uniform Code of Military Justice,"[12] the treaty exempted such employees from arrest, service of process, civil or criminal, while within the Site, "except with the permission of the Commanding Officer in charge of the United States Forces in such Sites." More important, under this classification, the United States was granted "the right to exercise * * * exclusive jurisdiction over security offenses"[13] on or off the site. The treaty prescribed "concurrent jurisdiction over all other offenses[14] wherever committed." Specific machinery was also established to enable the United States to exert or waive its right to exclusive

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[12] This term is defined in 10 USCA §802 (Art. 2): "The following persons are subject to this chapter: * * * (11) subject to any treaty or agreement to which the United States is * * * a party * * *, persons serving with, employed by, or accompanying the Armed Forces outside the United States [except certain defined territory, Alaska, Canal Zone, etc.]. (12) subject to any treaty or agreement to which the United States is * * * a party * * *, persons within an area leased by or otherwise reserved or acquired for the use of the United States which is under the control of the Secretary concerned and which is outside the United States and [specified excluded territory, Alaska, etc.]." August 10, 1956, ch. 1041, 70A Stat. 37.

As a definition of status and determination of exemptions from the judicial power of the local government, the operation of the treaties was in no way infringed by Kinsella v. Krueger, 1956, 76 S.Ct. 886, 351 U.S. 470, 100 L.Ed. 1342, rehearing granted, 77 S.Ct. 124, 352 U.S. 901, 1 L.Ed.2d 92; Reid v. Covert, 1957, 354 U.S. 1, 77 S.Ct. 1222, 1 L.Ed.2d 1148, and related cases holding military trials in non capital cases to be an unconstitutional denial of jury trial for civilians.

[13] These are defined to include offenses punishable under laws of the United States for "(i) treason; (ii) * * * sabotage or espionage or * * * official secrets; (iii) any other offense relating to operations in [the] island of the Government of the United States * * * under this Agreement, or to the safety of any equipment or other property of the * * * United States * * * in [the] island under this Agreement."

[14] This included the so-called "United States interest offense" defined broadly as an act solely against the interests of the United States or a person or property of the United States "present in [the] island by reason only of * * * employment in connection with" the missile program.

jurisdiction and for mutual determination as to the trial of cases of concurrent jurisdiction.

These employees are in these islands solely because of the terms of the treaties. Under this basic arrangement, these civilian employees have rights and privileges which set them apart from the general community. They bear none of the usual obligations of a local resident, whether citizen or alien resident. They are exempt from all of the affirmative obligations and responsibilities of a resident citizen or alien. And as to the universal negative obligation imposed on all inhabitants not to violate established law, they are above the community and beyond the reach of its judicial power unless a reasonable official of the United States Government purposefully waives the right to exert exclusive or concurrent jurisdiction. They are in no real sense then a part of the local community. They are free from all of the ordinary, traditional and essential burdens of the people who work, live, own property and pay taxes there. They are merely present and presence alone, since the amendment of 1942, has not been sufficient.

Conceding that the Taxpayers in good faith intended to work in one or more of these islands wherever Pan Am would send them for an indefinite period of time for employment which might extend over many years[15] and each did his best to enter into the life of the community to the fullest extent of this primitive society, the existence of each, except for the physical environment imposed by presence, was for all practical purposes the same as within the United States. Extraterritorial rights, privileges, and immunities of the fundamental kind accorded here keep this physical presence from ripening into actual residence in a foreign country. We emphasize this inescapable consequence of the basic relationship created by the treaties to make clear that while the result here is the same as in *Downs v. Commissioner*, 9 Cir., 1948, 166 F.2d 504, cert. denied, 1948, 334 U.S. 832, 68 S.Ct. 1346, 92 L.Ed. 1759, and *Jones v. Kyle*, 10 Cir., 1951, 190 F.2d

[15] The treaties are to expire in 25 years.

353, cert. denied, 1951, 342 U.S. 886, 72 S.Ct. 175, 96 L.Ed. 664, we do not rely, as did such decisions, on the limited, restricted nature of the employment in terms of time and nature of work to be accomplished.

Whether for 20 days or for 20 years, employment under the arrangement authorized by such a treaty could not amount to residence *in* a foreign country, no matter how bona fide the *presence* might be.

REVERSED.

Adm. Office, U. S. Courts—E. S. Upton Printing Co., N. O., La.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

OCTOBER TERM, 1963

No. 20796

T. C. Docket Nos. 86447, 88480, and 88939

COMMISSIONER OF INTERNAL REVENUE, PETITIONER,

v.

LYON TYLER MATTHEW, ET AL, RESPONDENTS.

PETITIONS FOR REVIEW OF DECISIONS OF THE TAX COURT OF THE UNITED STATES.

Before TUTTLE, Chief Judge, and BROWN, Circuit Judge, and BREWSTER, District Judge.

JUDGMENT

This cause came on to be heard on the petitions of the Commissioner of Internal Revenue for review of decisions of the Tax Court of the United States, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered, adjudged and decreed by this Court that the decisions of the Tax Court in this cause be, and the same are hereby, reversed.

July 28, 1964

Issued as Mandate: Oct. 29, 1964

APPENDIX B

STATUTES

Section 911. EARNED INCOME FROM SOURCES WITHOUT THE UNITED STATES (26 U. S. C. 1958 Ed., Sec. 911).

(a) *General Rule.* — The following items shall not be included in gross income and shall be exempt from taxation under this subtitle:

(1) *Bona fide resident of foreign country.* — In the case of an individual citizen of the United States, who establishes to the satisfaction of the Secretary or his delegate that he has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year, amounts received from sources without the United States (except amounts paid by the United States or any agency thereof) if such amounts constitute earned income (as defined in subsection (b)) attributable to such period; but such individual shall not be allowed as a deduction (other than those allowed by section 151, relating to personal exemptions) properly allocable to or chargeable against amounts excluded from gross income under this paragraph.

APPENDIX C

REGULATIONS

Section 1.911-1 (a) (2) (T. D. 6249, 1957-2 C. B. 436):

(2) *What constitutes bona fide residence.* Though the period of bona fide foreign residence must be continuous and uninterrupted, once bona fide residence in a foreign country or countries has been established, temporary visits to the United States or elsewhere on vacation or business trips will not necessarily deprive the citizen of his status as a bona fide resident of a foreign country. Whether the individual citizen of the United States is a bona fide resident of a foreign country shall be determined by the application, to the extent feasible, of the principles of section 871 and the regulations thereunder, relating to what constitutes residence or nonresidence, as the case may be, in the United States in the case of an alien individual.

Section 1.871-2 (b) (T. D. 6258, 1957-2 C. B. 368):

(b) *Residence defined.* An alien actually present in the United States who is not a mere transient or sojourner is a resident of the United States for purposes of the income tax. Whether he is a transient is determined by his intentions with regard to the length and nature of his stay. A mere floating intention, indefinite as to time, to return to another country is not sufficient to constitute him a transient. If he lives in the United States and has no definite intention as to his stay, he is a resident. One who comes to the United States for a definite purpose which in its nature may be promptly accomplished is a transient; but, if his purpose is of such nature that an extended stay may be necessary for its accomplishment, and to that end the alien makes his home temporarily in the United States, he becomes a resident, though it may be his intention at all times to return to his domicile abroad

when the purpose for which he came has been consummated or abandoned. An alien whose stay in the United States is limited to a definite period by the immigration laws is not a resident of the United States within the meaning of this section, in the absence of exceptional circumstances.

APPENDIX D

TREATIES AND OTHER INTERNATIONAL ACTS SERIES 2099

THE BAHAMAS LONG RANGE PROVING GROUND

Agreement and Exchange of Notes between the UNITED STATES OF AMERICA and the UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

- Signed at Washington July 21, 1950
- Entered into force July 21, 1950

DEPARTMENT OF STATE
PUBLICATION 3956
[Literal print]

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND CONCERNING A LONG RANGE PROVING GROUND FOR GUIDED MISSILES TO BE KNOWN AS "THE BAHAMAS LONG RANGE PROVING GROUND"

The Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, with the concurrence of the Government of the Bahama Islands,

Considering that it is the intention of the Government of the United States of America to establish a Long Range Proving Ground consisting of a Main Base and Launching Area which shall be in the vicinity of Cape Canaveral, Florida, United States of America, and of a Flight Testing Range, as defined in this Agreement, which shall extend to the south-east from the Launch-

ing Area through the Bahama Islands and the waters adjacent thereto,

Having decided that the said Proving Ground should be used by the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland for testing the flight of guided missiles and associated equipment and for training with such missiles and equipment, and

Desiring that this Agreement shall be fulfilled in a spirit of good neighborliness between the Governments concerned, and that details of its practical application shall be arranged by friendly cooperation,

Have agreed as follows:

ARTICLE I

Definitions

For the purposes of this Agreement:

(1) "Range Area" means that part of the Flight Testing Range which lies within the territory of the Bahama Islands (including the territorial waters thereof).

(2) "United States authorities" means the authority or authorities from time to time authorized or designated, by the Government of the United States of America, for the purpose of exercising the powers in relation to which the expression is used.

(3) "United States Forces" means the armed forces of the United States of America, and "member of the United States Forces" means a member of those forces who is entitled to wear the uniform thereof.

(4) "Flight Testing Range" means the area within the red and hatched line drawn on the attached map.

(5) "National of the United States" means a citizen of the United States or a person who, though not a citizen of the United States, owes allegiance to the United States.

(6) "British national" means any British subject or Commonwealth citizen or any British protected person, but shall not include a person who is both a British national and a member of the United States Forces.

(7) "Local alien" means a person, not being a British national, a member of the United States Forces or a national of the United States, who is ordinarily resident in the Bahama Islands.

(8) "Sites" means the sites provided under Article IV of this Agreement so long as they are so provided.

ARTICLE II

General Description of Rights

(1) Subject to the provisions of this Article, the Government of the United States of America shall have the right in the Range Area:

(a) to launch, fly and land guided missiles;

(b) to establish, maintain and use an instrumentation and a communications system including radar, radio, land lines and submarine cables for operational purposes in connection with the Flight Testing Range;

(c) to operate such vessels and aircraft as may be necessary for purposes connected directly with the operation of the Flight Testing Range.

(2) No wireless station, submarine cable, land line or other installation shall be established within the Range Area except at such place or places as may be agreed between the Contracting Governments, provided that such agreement shall not be required in respect of any wireless station, submarine cable, land line or other installation to be established within a Site.

(3) No wireless station shall be established or used in the Range Area otherwise than for the purpose of operating the Flight Testing Range.

(4) When submarine cables established in accordance with paragraph (1) of this Article are no longer required for the purposes of this Agreement, their disposal or further use shall be subject to consultation between the Contracting Governments and, in the absence of agreement, they shall be removed by and at the expense of the Government of the United States of America.

(5) The use of radio frequencies, powers and band widths, for radio services (including radar), under any of the provisions of this Agreement, shall be subject to the prior concurrence of the Senior Member of the British Armed Forces posted to the Bahamas Long Range Proving Ground.

(6) The Contracting Governments shall, in consultation with the Government of the Bahama Islands, take all reasonable precautions against possible danger and damage resulting from operations under this Agreement in the Flight Testing Range.

(7) The rights granted to the Government of the United States of America by this Article shall not be exercised unreasonably or so as to interfere with or to prejudice the safety of navigation, aviation or communication within the Flight Testing Range and the rights so granted shall be exercised in the spirit of the last paragraph of the Preamble.

ARTICLE III

Rights of Way

The Government of the United Kingdom of Great Britain and Northern Ireland shall, after consultation with the Government of the Bahama Islands, provide to the Government of the United States of America such rights of way as may be agreed to be necessary for the operation of the Flight Testing Range.

ARTICLE IV

Provision of Sites

(1) The Government of the United Kingdom shall, after consultation with the Government of the Bahama Islands, provide so long as this Agreement remains in force such Sites for the purpose of the operation of the Flight Testing Range as may be agreed between the Contracting Governments to be necessary for that purpose. When it is agreed between the Contracting Governments that any Site provided under this Article is no longer necessary for the purpose of the operation of the Flight Testing Range, the Government of the United Kingdom shall be entitled to cease to provide the Site for that purpose.

(2) Access to the Sites shall not be permitted to persons not officially connected with the Bahamas Long Range Proving Ground except with the consent of the Senior Member of the British Armed Forces posted to the Bahamas Long Range Proving Ground and the Senior Member of the United States Armed Forces detailed to the said Proving Ground.

ARTICLE V

Jurisdiction

(1) The Government of the United States of America shall have the right to exercise the following jurisdiction over offenses committed in the Bahama Islands:

(a) Where the accused is a member of the United States Forces,

(i) if a state of war exists, exclusive jurisdiction over all offenses wherever committed;

(ii) if a state of war does not exist, exclusive jurisdiction over security offenses wherever committed and United States interest offenses committed inside the Sites; concurrent jurisdiction over all other offenses wherever committed.

(b) Where the accused is a British national or a local alien and a civil court of the United States is sitting in the Bahama Islands, exclusive jurisdiction over security offenses committed inside the Sites.

(c) Where the accused is not a member of the United States Forces, a British national or a local alien, but is a person subject to United States military or naval law,

(i) if a state of war exists, exclusive jurisdiction over security offenses committed inside the Sites and United States interest offenses committed inside the Sites; concurrent jurisdiction over all other offenses wherever committed;

(ii) if a state of war does not exist and there is no civil court of the United States sitting in the Bahama Islands, exclusive jurisdiction over security offenses which are not punishable under the law of the Bahama Islands; concurrent jurisdiction over all other offenses committed inside the Sites;

(iii) if a state of war does not exist and a civil court of the United States is sitting in the Bahama Islands, exclusive jurisdiction over security offenses committed inside the Sites; concurrent jurisdiction over all other offenses wherever committed.

(d) Where the accused is not a member of the United States Forces, a British national or a local alien, and is not a person subject to United States military or naval law, and a civil court of the United States is sitting in the Bahama Islands, exclusive jurisdiction over security offenses committed inside the Sites; concurrent jurisdiction over all other offenses committed inside the Sites and, if a state of war exists, over security offenses committted outside the Sites.

(2) Wherever, under paragraph (1) of this Article, the Government of the United States of America has the right to exercise exclusive jurisdiction over security offenses committed inside the Sites, such right shall extend to security offenses committed outside the Sites which are not punishable under the law of the Bahama Islands.

(3) In every case in which under this Article the Government of the United States of America has the right to exercise jurisdiction and the accused is a British national, a local alien or, being neither a British national nor a local alien, is not a person subject to United States military or naval law, such jurisdiction shall be

exercisable only by a civil court of the United States sitting in the Bahama Islands.

(4) In every case in which under this Article the Government of the United States of America has the right to exercise exclusive jurisdiction, the following provisions shall have effect:

(a) The United States authorities shall inform the Government of the Bahama Islands as soon as is practicable whether or not they elect to exercise such jurisdiction over any alleged offenses which may be brought to their attention by the competent authorities of the Bahama Islands or in any other case in which the United States authorities are requested by the competent authorities of the Bahama Islands to furnish such information.

(b) If the United States authorities elect to exercise such jurisdiction, the accused shall be brought to trial accordingly, and the courts of the Bahama Islands shall not exercise jurisdiction except in aid of a court or authority of the United States, as required or permitted by the law of the Bahama Islands.

(c) If the United States authorities elect not to exercise such jurisdiction, and if it shall be agreed between the Government of the Bahama Islands and the United States authorities that the alleged offender shall be brought to trial, nothing in this Article shall affect the exercise of jurisdiction by the courts of the Bahama Islands in the case.

(5) In every case in which under this Article the Government of the United States of America has the right to exercise concurrent jurisdiction, the following provisions shall have effect:

(a) The case shall be tried by such court as may be ar-

ranged between the Government of the Bahama Islands and the United States authorities.

(b) Where an offense is within the jurisdiction of a civil court of the Bahama Islands and of a United States military or naval court, conviction or acquittal of the accused by one such court shall not exclude subsequent trial by the other, but in the event of such subsequent trial the court in awarding punishment shall have regard to any punishment awarded in the previous proceedings.

(c) Where the offense is within the jurisdiction of a civil court of the Bahama Islands and of a civil court of the United States, trial by one shall exclude trial by the other.

(6) Notwithstanding anything contained elsewhere in this Article, when a state of war exists in which the Government of the United Kingdom is, and the Government of the United States of America is not, engaged, then in any case in which the Government of the United States of America would, but for this paragraph, have exclusive jurisdiction, that jurisdiction shall be concurrent in respect of any of the following offenses against any part of His Majesty's dominions committed outside the Sites or, if not punishable by the Government of the United States of America in the Bahama Islands, inside the Sites:

(a) treason;

(b) any offense of the nature of sabotage or espionage or against any law relating to official secrets;

(c) any other offense relating to operations in the Bahama Islands of the Government of any part of His Majesty's dominions, or to the safety of His Majesty's naval, military or air bases or establishments or any part thereof or of any equipment

or other property of any such Government in the Bahama Islands.

(7) Nothing in this Article shall give the Government of the United States of America the right to exercise jurisdiction over a member of a United Kingdom, Dominion or Colonial armed force, except that, if a civil court of the United States is sitting in the Bahama Islands and a state of war does not exist, or a state of war exists in which the Government of the United States of America is, and the Government of the United Kingdom is not, engaged, the Government of the United States of America shall have the right, where the accused is a member of any such force, to exercise concurrent jurisdiction over security offenses committed inside the Sites.

(8) Nothing in this Article shall affect the jurisdiction of a civil court of the Bahama Islands except as expressly provided in this Article.

(9) In this Article the following expressions shall have the meanings hereby assigned to them:

(a) "Security offense" means any of the following offenses against the Government of the United States of America and punishable under the law of the United States of America:

(i) treason;

(ii) any offense of the nature of sabotage or espionage or against any law relating to official secrets;

(iii) any other offense relating to operations, in the Bahama Islands, of the Government of the United States of America, or to the safety of any equipment or other property of the Government of the United States of America in the Bahama Islands.

(b) "State of war" means a state of actual hostilities in which either the Government of the United States of America or the Government of the United Kingdom is engaged and which has not been formally terminated, as by surrender.

(c) "United States interest offense" means an offense which (excluding the general interest of the Government of the Bahama Islands in the maintenance of law and order therein) is solely against the interests of the Government of the United States of America or against any person (not being a British national or local alien) or property (not being property of a British national or local alien) present in the Bahama Islands by reason only of service or employment in connection with the construction, maintenance, operation or defense of the Flight Testing Range.

ARTICLE VI

Security Legislation

The Government of the Bahama Islands will take such steps as may from time to time be agreed to be necessary with a view to the enactment of legislation to ensure the adequate security and protection of the Sites and United States equipment and other property, and the operations of the United States under this Agreement and the punishment of persons who may contravene any laws or regulations made for that purpose. The Government of the Bahama Islands will also from time to time consult with the United States authorities in order that the laws and regulations of the United States of America and of the Bahama Islands in relation to such matters may, so far as circumstances permit, be similar in character.

ARTICLE VII

Arrest and Service of Process

(1) No arrest of a person who is a member of the United States Forces or who is a national of the United States subject to United States military law shall be made and no process, civil or criminal, shall be served on any such person within any Site except with the permission of the Commanding Officer in charge of the United States Forces in such Site; but should the Commanding Officer refuse to grant such permission he shall (except where, under Article V, jurisdiction is to be exercised by the United States or is not exercisable by the courts of the Bahama Islands) forthwith take the necessary steps to arrest the person charged and surrender him to the appropriate authority of the Bahama Islands or to serve such process, as the case may be, and to provide for the attendance of the server of such process before the appropriate court of the Bahama Islands or procure such server to make the necessary affidavit or declaration to prove such service.

(2) In cases where the courts of the United States have jurisdiction under Article V, the Government of the Bahama Islands will on request give reciprocal facilities as regards the service of process and the arrest and surrender of persons charged.

(3) In this Article the expression "process" includes the process by way of summons, subpoena, warrant, writ or other judicial document for securing the attendance of a witness, or for the production of any documents or exhibits, required in any proceedings, civil or criminal.

ARTICLE VIII

Right of Audience for United States Counsel

In cases in which a member of the United States Forces shall be a party to civil or criminal proceedings in any court of the Bahama Islands by reason of some alleged act or omission arising out of or in the course of his official duty, United States counsel (authorized to practice before the courts of the United States) shall have the right of audience, provided that such counsel is in the service of the Government of the United States of America and appointed for that purpose either generally or specially by the appropriate authority.

ARTICLE IX

Surrender of Persons Charged

Where a person charged with an offense which falls to be dealt with by the courts of the Bahama Islands is in a Site, or a person charged with an offense which falls under Article V to be dealt with by courts of the United States is in the Bahama Islands but outside the Sites, such person shall be surrendered to the Government of the Bahama Islands, or to the United States authorities, as the case may be, in accordance with special arrangements made between that Government and those authorities.

ARTICLE X

Public Services

The Government of the United States of America shall have the right to employ and use all utilities, services and facilities,

harbors, roads, highways, bridges, viaducts, canals and similar channels of transportation belonging to or controlled or regulated by the Government of the Bahama Islands or the Government of the United Kingdom on such conditions as shall be agreed between the Contracting Governments.

ARTICLE XI

Shipping and Aviation

(1) The Government of the United States of America may place or establish in the Sites and the territorial waters adjacent thereto, or in the vicinity thereof, lights and other aids to navigation of vessels and aircraft necessary for the operation of the Flight Testing Range. Such lights and other aids shall conform to the system in use in the Bahama Islands. The position, characteristics and any alterations thereof shall be determined in consultation with the appropriate authority in the Bahama Islands and the Senior Member of the British Armed Forces posted to the Bahamas Long Range Proving Ground.

(2) United States public vessels operated by the Army, Navy, Air Force, Coast Guard or the Coast and Geodetic Survey bound to or departing from a Site shall not be subject to compulsory pilotage in the Bahama Islands. If a pilot is taken pilotage shall be paid for at appropriate rates. Such United States public vessels shall have such exemption from light and harbor dues in the Bahama Islands as shall be agreed between the Contracting Governments.

(3) Commercial aircraft shall not be authorized to operate from any of the Sites (save in case of emergency or for strictly military purposes under supervision of the Army, Navy or Air Force Departments) except by agreement between the Government of the United States of America and the Government of the United Kingdom.

Article XII

Immigration

(1) The immigration laws of the Bahama Islands shall not operate or apply so as to prevent admission into the Bahama Islands, for the purposes of this Agreement, of any member of the United States Forces posted to a Site or any person (not being a national of a Power at war with His Majesty The King) employed by, or under a contract with, the Government of the United States of America in connection with the establishment, maintenance, or use of the Flight Testing Range; but suitable arrangements shall be made by the United States to enable such persons to be readily identified and their status to be established.

(2) If the status of any person within the Bahama Islands and admitted thereto under the foregoing paragraph shall be altered so that he would no longer be entitled to such admission, the United States authorities shall notify the Government of the Bahama Islands and shall, if such person be required to leave the Bahama Islands by that Government, be responsible for providing him with a passage from the Bahama Islands within a reasonable time, and shall in the meantime prevent his becoming a public responsibility of the Bahama Islands.

Article XIII

Motor Vehicle Taxes

No tax or fee shall be payable in respect of registration or licensing for use in the Bahama Islands of motor vehicles belonging to the Government of the United States of America and used for purposes connected directly with the establishment, maintenance or use of the Flight Testing Range.

ARTICLE XIV

Customs Duties and Other Taxes on Goods

(1) No import, excise, consumption or other tax, duty or impost shall be charged on:

(a) material, equipment, supplies or goods for use in the establishment, maintenance, or use of the Flight Testing Range consigned to, or destined for, the United States authorities or a contractor;

(b) goods for use or consumption aboard United States public vessels or aircraft of the Army, Navy, Air Force, Coast Guard or Coast and Geodetic Survey;

(c) goods consigned to the United States authorities for the use of institutions under Government control known as Post Exchanges, Ships' Service Stores, Commissary Stores or Service Clubs, or for sale thereat to members of the United States Forces, or civilian employees of the United States being nationals of the United States and employed in connection with the Flight Testing Range, or members of their families resident with them and not engaged in any business or occupation in the Bahama Islands;

(d) the personal belongings or household effects of persons referred to in sub-paragraph (c) of this Article and of contractors and their employees being nationals of the United States employed in the establishment, maintenance, or use of the Flight Testing Range and present in the Bahama Islands by reason only of such employment.

(2) No export tax shall be charged on the material, equipment, supplies or goods mentioned in paragraph (1) in the event of re-shipment from the Bahama Islands.

(3) This Article shall apply notwithstanding that the material,

equipment, supplies or goods pass through other parts of the Bahama Islands enroute to or from a Site.

(4) Administrative measures shall be taken by the United States authorities to prevent the resale of goods which are sold under paragraph (1) (c), or imported under paragraph (1) (d) of this Article, to persons not entitled to buy goods at such Post Exchanges, Ships' Service Stores, Commissary Stores or Service Clubs, or not entitled to free importation under the said paragraph (1) (d); and generally to prevent abuse of the customs privileges granted under this Article. There shall be cooperation between such authorities and the Government of the Bahama Islands to this end.

(5) The understanding with respect to paragraph (1) (d) of Article XIV of the Agreement for the Use and Operation of Certain Bases, signed March 27, 1941, [1] embodied in the notes exchanged by the Contracting Governments at Washington on January 18, 1946 and February 21, 1946, the texts of which are annexed hereto, [2] is hereby made applicable to this Article.

ARTICLE XV

Taxation

(1) No member of the United States Forces or national of the United States, serving or employed in the Bahama Islands in connection with the establishment, maintenance or use of the Flight Testing Range, and residing in the Bahama Islands by reason only of such employment, or his wife or minor children, shall be liable to pay income tax in the Bahama Islands except in respect of income derived from the Bahama Islands.

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[1] Executive Agreement Series 235; 55 Stat. 1560.

[2] *Post*, p. 17; printed also as Treaties and Other International Acts Series 1592; 61 Stat., Pt. 3, p. 2637.

(2) No such person shall be liable to pay in the Bahama Islands any poll tax or similar tax on his person, or any tax on ownership or use of property which is within a Site, or situated outside the Bahama Islands.

(3) No person ordinarily resident in the United States shall be liable to pay income tax in the Bahama Islands in respect of any profits derived under a contract made in the United States with the Government of the United States of America in connection with the establishment, maintenance or use of the Flight Testing Range, or any tax in the nature of a license in respect of any service or work for the Government of the United States of America in connection with the establishment, maintenance or use of the Flight Testing Range.

ARTICLE XVI

Postal Facilities

The Government of the United States of America shall have the right to establish United States Military Post Offices in the Sites for the exclusive use of the United States Forces, and civilian personnel (including contractors and their employees) who are nationals of the United States and employed in connection with the establishment, maintenance or use of the Flight Testing Range and the families of such persons, for domestic use between United States Military Post Offices in the Sites and between such Post Offices and other United States Post Offices and Post Offices in the Panama Canal Zone and the Philippine Islands.

ARTICLE XVII

Health Measures in the Vicinity of the Sites

The Government of the United States of America shall have the right, in collaboration with the Government of the Bahama Islands, and, where necessary, with the local authority concerned, to exercise, without other consideration than adequate and effective compensation to be paid by the Government of the United States of America to private owners or occupiers, if any, such powers as such Government and local authority may possess of entering upon any property in the vicinity of the Sites for the purpose of inspection, and of taking any necessary measures to improve sanitation and protect health.

ARTICLE XVIII

Removal of Property

(1) The title to any property placed on the Sites (including property affixed to the realty) and provided by the Government of the United States of America for the purposes of this Agreement, shall remain in the Government of the United States of America.

(2) At any time before the termination of this Agreement or within a reasonable time thereafter, such property may, at the discretion of the Government of the United States of America be

(a) relocated within the Sites, or

(b) removed therefrom, or

(c) disposed of while on a Site on the condition (unless otherwise agreed between the Government of the Bahama

Islands and the United States authorities) that it shall forthwith be removed therefrom.

(3) Any ground from which such property is so removed, shall be restored, as far as possible, to its present condition by the Government of the United States of America.

(4) The Government of the United States of America will not, in the Bahama Islands, dispose of any such property

(a) without the consent of the Government of the Bahama Islands, or

(b) without offering the property for sale to that Government, if such offer is consistent with laws of the United States of America then in effect, or

(c) before the expiration of such period, not being less than 120 days after the date of such offer, as may be reasonable in the circumstances.

(5) Such property may be exported by the United States authorities free from any license, export tax, duty, or impost.

(6) Any such property not removed or disposed of as aforesaid within a reasonable time after the termination of this Agreement, shall become the property of the Government of the Bahama Islands.

ARTICLE XIX

Rights to be Restricted to the Purposes of the Agreement

The Government of the United States of America shall not exercise any rights granted by this Agreement, or permit the exercise thereof, except for the purposes specified in this Agreement.

Article XX

Rights not to be Assigned

The Government of the United States of America shall not assign or part with any of the rights granted by this Agreement.

Article XXI

Liaison

The Senior Member of the British Armed Forces posted to the Bahamas Islands Long Range Proving Ground and the Senior Member of the United States Armed Forces detailed to the said Proving Ground shall jointly decide the details of the execution of this Agreement in its application to specific situations, in the best interests of all concerned. The said Senior Member of the British Armed Forces shall be responsible for undertaking negotiations with the Government of the Bahama Islands in this connection.

Article XXII

Claims for Compensation

(1) The Government of the United States of America undertakes to pay adequate and effective compensation, which shall not be less than the sum payable under the laws of the Bahama Islands, and to indemnify the Governments of the United Kingdom and of the Bahama Islands and all other authorities, corporations and persons in respect of valid claims arising out of:

(a) the death or injury of any person, except persons

employed by the Government of the United Kingdom in connection with the Bahamas Long Range Proving Ground, resulting from the establishment, maintenance or use by the Government of the United States of America of the Flight Testing Range;

(b) damage to property resulting from any action of the Government of the United States of America in connection with the establishment, maintenance or use of the Flight Testing Range;

(c) the acquisition of private property, or of rights affecting private property, to enable the Sites, or any rights of the Government of the United States of America under this Agreement, to be provided.

(2) Compensation payable under sub-paragraph (1) (c) of this Article shall be assessed in accordance with the laws of the Bahama Islands.

(3) For the purposes of this Article the laws of the Bahama Islands shall be the laws in force at the time of the signature of this Agreement, provided that any subsequent alteration of the said laws shall have effect if the Contracting Governments so agree.

ARTICLE XXIII

Freedom from Rents and Charges

Except as provided in Articles XVII and XXII the Sites shall be provided, and the rights of the Government of the United States of America under this Agreement shall be made available, free from all rent and charges to the Government of the United States of America.

ARTICLE XXIV

Modification of the Agreement

Modification of this Agreement shall be considered by the Contracting Governments in the light of any modification of the Agreement between the Governments of the United States of America and the United Kingdom relating to the Bases leased to the United States of America dated the 27th March, 1941, which may be made under Article XXVIII of that Agreement.

ARTICLE XXV

Implementation of the Agreement

(1) The Government of the United States of America and the Government of the Bahama Islands respectively will do all in their power to assist each other in giving full effect to the provisions of this Agreement according to its tenor and will take all appropriate steps to that end.

(2) During the period for which this Agreement remains in force, no laws of the Bahama Islands which would derogate from or prejudice any of the rights conferred on the Government of the United States of America by this Agreement shall be applicable within the Range Area, save with the concurrence of the Government of the United States.

ARTICLE XXVI

Final Provisions

This Agreement shall come into force on the date of signature and shall continue in force for a period of twenty-five years and

thereafter until one year from the day on which either Contracting Government shall give notice to the other of its intention to terminate the Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Washington this 21st day of July, 1950.
FOR THE GOVERMENT OF THE UNITED STATES OF AMERICA:

DEAN ACHESON
Secretary of State
of the United States of America

FOR THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND:

OLIVER FRANKS.
Ambassador Extraordinary and Plenipotentiary
at Washington

ANNEX

BRITISH EMBASSY,
WASHINGTON, D. C.
January 18th, 1946.

No. 35
Ref: 265/2/46

SIR,

I have the honour to inform Your Excellency that the Government of the United Kingdom has agreed to the following understanding in respect of paragraph (1) (D) of Article XIV of the Agreement for the Use and Operation of Certain Bases which was concluded between the Governments of the United States and of the United Kingdom at London on March 27th, 1941 insofar as that Agreement relates to bases in Bermuda, in the Caribbean and in British Guiana:

(a) By arrangement with the United States authorities, the Colonial authorities will be shown and have explained to them the administrative measures taken to prevent the unauthorised resale of goods sold under Article XIV (1) (C) and other precautions taken to prevent abuse of customs privileges granted under that Article.

(b) The United States authorities will undertake to ensure that free importation is strictly limited to goods covered by the above-mentioned Agreement and subsequent correspondence and, in particular, that goods outside the interpretation given by the Government of the United Kingdom to Article XIV (1) (D) but within that given to it by the Government of the United States (consumable goods and goods acquired after first arrival) and presents are not admitted free of duty unless they comply with the conditions already agreed, i. e. they must be (i) of United States origin, if the Colonial Government so requires, (ii) im-

ported by (or presents for) United States personnel described in Article XIV (1) (C), and (iii) imported for the personal use of the recipient.

(c) This understanding and these arrangements are subject to and without prejudice to reconsideration of the question *ab initio* in due course.

(d) It is, of course, also understood that the United States will continue to do all in their power to prevent any abuse of customs privileges and that United States authorities will co-operate with the Colonial authorities to this end at every level both in prevention and in investigation of cases where there is evidence of leakage.

2. If the Government of the United States agrees to this understanding. I would suggest that the present Note and your Your Excellency's reply to that effect be regarded as placing it on record.

I have the honour to be with the highest consideration Sir,
Your most obedient humble Servant,

JOHN BALFOUR.
(For the Ambassador)

The Honourable DEAN ACHESON,
Acting Secretary of State,
Department of State,
Washington, D. C.

DEPARTMENT OF STATE
WASHINGTON
February 21, 1946

EXCELLENCY:

I have the honor to acknowledge receipt of Your Excellency's note no. 35 of January 18, 1946 (Ref: 265/2/46), stating that the Government of the United Kingdom has agreed to the following understanding in respect of paragraph (1) (D) of Article XIV of the Agreement for the Use and Operation of Certain Bases, which was concluded between the Governments of the United States and of the United Kingdom at London on March 27, 1941, in so far as that Agreement relates to Bases in Bermuda, in the Caribbean and in British Guiana:

"(a) By arrangement with the United States authorities, the Colonial authorities will be shown and have explained to them the administrative measures taken to prevent the unauthorized resale of goods sold under Article XIV (1) (C) and other precautions taken to prevent abuse of customs privileges granted under that Article.

"(b) The United States authorities will undertake to ensure that free importation is strictly limited to goods covered by the above-mentioned Agreement and subsequent correspondence, and, in particular, that goods outside the interpretation given by the Government of the United Kingdom to Article XIV (1) (D) but within that given to it by the Government of the United States (consumable goods and goods acquired after first arrival) and presents are not admitted free of duty unless they comply with the conditions already agreed, i. e. they must be (i) of United States origin, if the Colonial Government so requires, (ii) imported by (or presents for) United States personnel described in Article XIV (1) (C), and (iii) imported for the personal use of the recipient.

"(c) This understanding and these arrangements are subject to and without prejudice to reconsideration of the question *ab initio* in due course.

"(d) It is, of course, also understood that the United States will continue to do all in their power to prevent any abuse of customs privileges and that United States authorities will co-operate with the Colonial authorities to this end at every level both in prevention and in investigation of cases where there is evidence of leakage."

In reply I have the honor to inform Your Excellency that the Government of the United States agrees with the above understanding and that Your Excellency's note and this reply will be regarded as placing it on record.

Accept, Excellency, the renewed assurances of my highest consideration.

For the Secretary of State:

DONALD RUSSELL

His Excellency
The Right Honorable
THE EARL OF HALIFAX, K. G.,
British Ambassador.

The British Ambassador to the Secretary of State

No. 375
Ref: 1191/4/50/50

BRITISH EMBASSY,
WASHINGTON, D. C.
21st July 1950.

SIR,

With reference to the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America concerning a

long-range proving ground for guided missiles to be known as "The Bahamas Long Range Proving Ground" which was signed today, I have the honour to inform you, under instructions from His Majesty's Principal Secretary of State for Foreign Affairs, that certain provisions of the Agreement will require to be implemented by future legislation of the Bahamas Legislature. While, therefore, legislation for this purpose will be introduced at the earliest opportunity, the Government of the United States of America will understand that the obligation imposed upon His Majesty's Government by the provisions to which I have referred will be subject to the passage of the necessary legislation by the Bahamas Legislature.

I avail myself of this opportunity to renew to you the assurance of my highest consideration.

OLIVER FRANKS.

The Honourable
DEAN G. ACHESON,
Secretary of State
of the United States,
Washington, D. C.

[No. 2099]

The Secretary of State to the British Ambassador

DEPARTMENT OF STATE
WASHINGTON
July 21, 1950

EXCELLENCY:

I have the honor to acknowledge the receipt of your note of today's date stating that certain provisions of the Agreement concerning the Bahamas Long Range Proving Ground, which was signed today, will not come into effect until implemented by action of the Bahamas Legislature.

Due note has been taken of this requirement. The Government

of the United States of America is glad to know that legislation for this purpose will be introduced at the earliest opportunity.

Accept, Excellency, the renewed assurances of my highest consideration.

DEAN ACHESON

His Excellency
The Right Honorable
SIR OLIVER SHEWELL FRANKS, K.C.B., C.B.E.,
British Ambassador.

APPENDIX E

TREATIES AND OTHER INTERNATIONAL ACTS SERIES 3603

BAHAMAS LONG RANGE PROVING GROUND
Establishment of Additional Sites
in *Ascension Island*

Agreement Between the
UNITED STATES OF AMERICA
and the UNITED KINGDOM OF
GREAT BRITIAN AND NORTHERN IRELAND
Signed at Washington June 25, 1956
DEPARTMENT OF STATE
[Literal print]

UNITED KINGDOM

Bahamas Long Range Proving Ground: Establishment of Additional Sites in Ascension Island
Agreement signed at Washington June 25, 1956;
Entered into force June 25, 1956.

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND CONCERNING THE EXTENSION OF THE BAHAMAS LONG RANGE PROVING GROUND BY THE ESTABLISHMENT OF ADDITIONAL SITES IN ASCENSION ISLAND

The Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland

Taking into account the Agreement signed at Washington on July 21, 1950, between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, with the concurrence of the Government of the Bahama Islands, concerning the Long Range Proving Ground, consisting of a Main Base and Launching Area in the vicinity of Cape Canaveral, Florida, United States of America, and of a Flight Testing Range, extending to the southeast from the Launching Area through the Bahama Islands and the waters adjacent thereto, and agreements for the extension of the said Proving Ground;

Reaffirming their decision that the said Proving Ground should be used by the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland for testing the flight of guided missiles and associated equipment and for training with such missiles and equipment;

Desiring that the limits of the said Proving Ground should be further extended to include the territory of Ascension Island and the waters adjacent thereto; and that the provisions set forth below for that purpose should be fulfilled in a spirit of good neighborliness between the Governments concerned, and that details of their practical application should be arranged by friendly cooperation,

Have agreed as follows:

ARTICLE I

Definitions

For the purposes of this Agreement:

(1) "Range Area" means that part of the Long Range Proving

Ground which lies within the territory of Ascension Island, including the territorial waters thereof.

(2) "United States authorities" means the authority or authorities from time to time authorized or designated, by the Government of the United States of America, for the purpose of exercising the powers in relation to which the expression is used.

(3) "United States Forces" means the Armed Forces of the United States of America, and "member of the United States Forces" means a member of those forces who is entitled to wear the uniform thereof.

(4) "National of the United States" means a citizen of the United States or a person who, though not a citizen of the United States, owes allegiance to the United States.

(5) "British national" means any British subject or Commonwealth citizen or any British protected person, but shall not include a person who is both a British national and a member of the United States Forces.

(6) "Local alien" means a person, not being a British national, a member of the United States Forces or a national of the United States, who is ordinarily resident in Ascension Island.

(7) "Sites" means the Sites provided under Article IV of this Agreement so long as they are so provided.

ARTICLE II

General Description of Rights

(1) Subject to the provisions of this Article, the Government of the United States of America shall have the right in the Range Area:

(a) to launch, fly and land guided missiles;

(b) to establish, maintain, and use an instrumentation and a communications system including radar, radio, land lines and submarine cables for operational purposes in connection with the Long Range Proving Ground;

(c) to operate such vessels and aircraft as may be necessary for purposes connected directly with the operation of the Long Range Proving Ground.

(2) No wireless station, submarine cable, land line or other installation shall be established by the United States authorities within the Range Area except at such place or places as may be agreed between the Contracting Governments, provided that such agreement shall not be required in respect of any wireless station, submarine cable, land line or other installation to be established within a Site.

(3) No submarine cable, wireless station, land line or other installation shall be established or used by the United States authorities within the Range Area otherwise than for the purpose of operating the Long Range Proving Ground. Any submarine cable, wireless station, land line or other installation established in connection with the Long Range Proving Ground shall be sited and operated in such a way that it will not cause interference with established civil communications.

(4) When submarine cables established in accordance with paragraph (1) of this Article are no longer required for the purpose of this Agreement, their disposal or further use shall be subject to consultation between the Contracting Governments and, in the absence of agreement, they shall be removed by and at the expense of the Government of the United States of America.

(5) The use of radio frequencies, powers and band widths, for radio services (including radar), under any of the provisions of

this Agreement, shall be subject to the prior concurrence of the senior British representative posted to the Long Range Proving Ground.

(6) The Contracting Governments shall, in consultation with the Government of Saint Helena, take all reasonable precautions against possible danger and damage resulting from operations under this Agreement in the Range Area.

(7) The rights granted to the Government of the United States of America by this Article shall not be exercised unreasonably or so as to interfere with or to prejudice the safety of navigation, aviation or communication within the Long Range Proving Ground and the rights so granted shall be exercised in the spirit of the last paragraph of the Preamble.

ARTICLE III

Rights of Way

The Government of the United Kingdom of Great Britain and Northern Ireland shall, after consultation with the Government of Saint Helena, provide to the Government of the United States of America such rights of way as may be agreed to be necessary for the operation of the Long Range Proving Ground. The cost of acquisition of any right of way over private property shall be borne by the Contracting Governments in such proportions as are agreed between them.

ARTICLE IV

Provision of Sites

(1) The Government of the United Kingdom shall, after consultation with the Government of Saint Helena, provide so long as

this Agreement remains in force such Sites for the purpose of the operation of the Long Range Proving Ground as may be agreed between the Contracting Governments to be necessary for that purpose. The cost of acquisition of private property or of rights affecting private property, to enable any Site to be provided, shall be borne by the Contracting Governments in such proportions as are agreed between them. When it is agreed between the Contracting Governments that any Site provided under this Article is no longer necessary for the purpose of the operation of the Long Range Proving Ground, the Government of the United Kingrom shall be entitled to cease to provide the Site for that purpose.

(2) Access to the Sites shall not be permitted to persons not officially connected with the Long Range Proving Ground except with the consent of the senior British representative posted to the Long Range Proving Ground and the senior member of the United States Armed Forces detailed to the said Proving Ground.

ARTICLE V

Jurisdiction

(1) The Government of the United States of America shall have the right to exercise the following jurisdiction over offenses committed in Ascension Island:

(a) Where the accused is a member of the United States Forces,

(i) if a state of war exists, exclusive jurisdiction over all offenses wherever committed;

(ii) if a state of war does not exist, exclusive jurisdiction over security offenses wherever committed and United States interest offenses committed inside the Sites; concurrent jurisdiction over all other offenses wherever committed.

(b) Where the accused is a British national or a local alien and a civil court of the United States is sitting in Ascension Island,

(i) if a state of war exists, exclusive jurisdiction, and

(ii) if a state of war does not exist, concurrent jurisdiction,

over security offenses committed inside the Sites.

(c) Where the accused is not a member of the United States Forces, a British national or a local alien, but is a person subject to the United States Uniform Code of Military Justice,

(i) if a state of war exists, exclusive jurisdiction over security offenses committed inside the Sites and United States interest offenses committed inside the Sites; concurrent jurisdiction over all other offenses wherever committed;

(ii) if a state of war does not exist and there is no civil court of the United States sitting in Ascension Island, exclusive jurisdiction over security offenses which are not punishable under the law of Ascension Island; concurrent jurisdiction over all other offenses wherever committed;

(iii) if a state of war does not exist and a civil court of the United States is sitting in Ascension Island, exclusive jurisdiction over security offenses committed inside the Sites; concurrent jurisdiction over all other offenses wherever committed.

(d) Where the accused is not a member of the United States Forces, a British national or a local alien, and is not a person subject to the United States Uniform Code of Military Justice, and a civil court of the United States is sitting in Ascension Island, exclusive jurisdiction over security offenses committed inside the Sites; concurrent jurisdiction over all other offenses committed inside the Sites and, if a state of war exists, over security offenses committed outside the Sites.

(2) Wherever, under paragraph (1) of this Article, the Government of the United States of America has the right to exercise exclusive jurisdiction over security offenses committed inside the Sites, such right shall extend to security offenses committed outside the Sites which are not punishable under the law of Ascension Island.

(3) In every case in which under this Article the Government of the United States of America has the right to exercise jurisdiction and the accused is a British national, a local alien or, being neither a British national nor a local alien, is not a person subject to the United States Uniform Code of Military Justice, such jurisdiction shall be exercisable only by a civil court of the United States sitting in Ascension Island.

(4) In every case in which under this Article the Government of the United States of America has the right to exercise exclusive jurisdiction, the following provisions shall have effect:

(a) The United States authorities shall inform the Government of Saint Helena as soon as is practicable whether or not they elect to exercise such jurisdiction over any alleged offenses which may be brought to their attention by the competent authorities of Ascension Island or in any other case in which the United States authorities are requested by the competent authorities of Ascension Island to furnish such information.

(b) If the United States authorities elect to exercise such jurisdiction, the accused shall be brought to trial accordingly, and the courts of Saint Helena or of Ascension Island shall not exercise jurisdiction except in aid of a court or authority of the United States, as required or permitted by the law of Saint Helena or the law of Ascension Island, as the case may be.

(c) If the United States authorities elect not to exercise such jurisdiction, and if it shall be agreed between the Government of Saint Helena and the United States authorities that the

alleged offender shall be brought to trial, nothing in this Article shall affect the exercise of jurisdiction by the courts of Saint Helena or of Ascension Island in the case.

(5) In every case in which under this Article the Government of the United States of America has the right to exercise concurrent jurisdiction, the following provisions shall have effect:

(a) The case shall be tried by such court as may be arranged between the Government of Saint Helena and the United States authorities.

(b) Where the offense is within the jurisdiction of a civil court of Saint Helena or of Ascension Island and of a civil court of the United States, trial by one shall exclude trial by the other.

(6) Notwithstanding anything contained elsewhere in this Article, when a state of war exists in which the Government of the United Kingdom is, and the Government of the United States of America is not, engaged, then in any case in which the Government of the United States of America would, but for this paragraph, have exclusive jurisdiction, that jurisdiction shall be concurrent in respect of any of the following offenses against any part of Her Majesty's dominions committed outside the Sites or, if not punishable by the Government of the United States of America in Ascension Island, inside the Sites:

(a) treason;

(b) any offense of the nature of sabotage or espionage or against any law relating to official secrets;

(c) any other offense relating to operations in Ascension Island of the Government of any part of Her Majesty's dominions, or to the safety of Her Majesty's naval, military or air bases or establishments or any part thereof or of any equipment or other property of any such Government in Ascension Island.

(7) Nothing in this Article shall give the Government of the United States of America the right to exercise jurisdiction over a member of a United Kingdom, Colonial or British Commonwealth armed force, except that, if a civil court of the United States is sitting in Ascension Island and a state of war does not exist or a state of war exists in which the Government of the United States of America is, and the Government of the United Kingdom is not, engaged, the Government of the United States of America shall have the right, where the accused is a member of any such force, to exercise concurrent jurisdiction over security offenses committed inside the Sites.

(8) Nothing in this Article shall affect the jurisdiction of a civil court of Saint Helena or of Ascension Island except as expressly provided in this Article.

(9) In this Article the following expressions shall have the meaning hereby assigned to them:

(a) "Security offense" means any of the following offenses against the Government of the United States of America and punishable under the law of the United States of America:

(i) treason;

(ii) any offense of the nature of sabotage or espionage or against any law relating to official secrets;

(iii) any other offense relating to operations in Ascension Island of the Government of the United States of America under this Agreement, or to the safety of any equipment or other property of the Government of the United States of America in Ascension Island under this Agreement.

(b) "State of war" means a state of actual hostilities in which either the Government of the United States of America or the Government of the United Kingdom is engaged and which has not been formally terminated, as by surrender.

(c) "United States interest offense" means an offense which (excluding the general interest of the Government of Saint Helena in the maintenance of law and order in Ascension Island) is solely against the interests of the Government of the United States of America or against any person (not being a British national or local alien) or property (not being property of a British national or local alien) present in Ascension Island by reason only of service or employment in connection with the construction, maintenance, operation or defense of the Long Range Proving Ground.

ARTICLE VI

Security Legislation

The Government of Saint Helena will take such steps as may from time to time be agreed to be necessary with a view to the enactment of legislation to ensure the adequate security and protection of the Sites and United States equipment and other property and the operations of the United States under this Agreement, and the punishment of persons who may contravene any laws or regulations made for that purpose. The Government of Saint Helena will also from time to time consult with the United States authorities in order that the laws and regulations of the United States of America and of Ascension Island in relation to such matters may, so far as circumstances permit, be similiar in character.

ARTICLE VII

Arrest and Service of Process

(1) No arrest of a person who is a member of the United States Forces or who is a national of the United States subject to the

United States Uniform Code of Military Justice shall be made and no process, civil or criminal, shall be served on any such person within the Sites except with the permission of the Commanding Officer in charge of the United States Forces in such Sites; but should the Commanding Officer refuse to grant such permission he shall (except where, under Article V, jurisdiction is to be exercised by the United States or is not exercisable by the courts of Saint Helena or of Ascension Island) forthwith take the necessary steps to arrest the person charged and surrender him to the appropriate authority of Ascension Island or to serve such process, as the case may be, and to provide for the attendance of the server of such process before the appropriate court of Saint Helena or of Ascension Island or procure such server to make the necessary affidavit or declaration to prove such service.

(2) In cases where the courts of the United States have jurisdiction under Article V, the Government of Saint Helena will on request give reciprocal facilities as regards the service of process and the arrest and surrender of persons charged.

(3) In this Article the expression "process" includes any process by way of summons, subpoena, warrant, writ or other judicial document for securing the attendance of a witness or a party, or for the production of any documents or exhibits, required in any proceedings, civil or criminal.

Article VIII

Right of Audience

(1) In cases in which a member of the United States Forces is a party to civil or criminal proceedings in any court of Saint Helena or of Ascension Island by reason of some alleged act or omission arising out of or in the course of his official duty, United

States counsel (authorized to practice before the courts of the United States) shall have the right of audience, provided that such counsel is in the service of the Government of the United States of America and appointed for that purpose either generally or specially by the appropriate authority.

(2) In cases in which a British national or a local alien is a party to criminal proceedings in a court of the United States sitting in Ascension Island, counsel authorized to practice before the courts of Saint Helena or of Ascension Island shall have the right of audience.

ARTICLE IX

Surrender of Persons Charged

Where a person charged with an offense which falls to be dealt with by the courts of Saint Helena or of Ascension Island is in a Site, or a person charged with an offense which falls under Article V to be dealt with by courts of the United States is in Ascension Island but outside a Site, such person shall be surrendered to the Government of Saint Helena or to the United States authorities, as the case may be, in accordance with special arrangements made between that Government and those authorities.

ARTICLE X

Public Services

The Government of the United States of America shall have the right to employ and use all utilities, services and facilities, harbors, roads, highways, bridges, viaducts, canals and similar channels of transportation in Ascension Island and belonging to

or controlled or regulated by or on behalf of the Government of Saint Helena or the Government of the United Kingdom on such conditions as shall be agreed between the Contracting Governments.

ARTICLE XI

Shipping and Aviation

(1) The Government of the United States of America may place or establish in the Sites and the territorial waters adjacent thereto, or in the vicinity thereof, lights and other aids to navigation of vessels and aircraft necessary for the operations of the Long Range Proving Ground. Such lights and other aids shall conform to the system in use in Ascension Island. The position, characteristics and any alterations thereof shall be determined in consultation with the appropriate authority in Saint Helena or Ascension Island and the senior British representative posted to the Long Range Proving Ground.

(2) United States public vessels operated by the Army, Navy, Air Force, Coast Guard or the Coast and Geodetic Survey bound to or departing from a Site shall not be subject to compulsory pilotage in Ascension Island. If a pilot is taken, pilotage shall be paid for at appropriate rates. Such United States public vessels shall have such exemption from light and harbor dues in Ascension Island as shall be agreed between the Contracting Governments.

(3) Commercial aircraft shall not be authorized to operate from any of the Sites (save in case of emergency or for strictly military purposes under supervision of the Army, Navy or Air Force Departments) except in accordance with the provision of any agreement for the time being in force between the Government

of the United States of America and the Government of the United Kingdom.

ARTICLE XII

Immigration

(1) The immigration laws of Ascension Island shall not operate or apply so as to prevent admission into Ascension Island, for the purposes of this Agreement, of any member of the United States Forces posted to a Site or any person (not being a national of a Power at war with Her Majesty The Queen) employed by, or under a contract with, either the Government of the United States of America or a contractor of that Government, in connection with the establishment, maintenance or use of the Long Range Proving Ground, or his wife or minor children; but suitable arrangements shall be made by the United States to enable such persons to be readily identified and their status to be established.

(2) If the status of any persons within Ascension Island and admitted thereto under the foregoing paragraph shall be altered so that he would no longer be entitled to such admission, the United States authorities shall notify the Government of Saint Helena and shall, if such person be required to leave Ascension Island by that Government, be responsible for providing him with a passage from Ascension Island within a reasonable time, and shall in the meantime prevent his becoming a public responsibility of Saint Helena.

ARTICLE XIII

Motor Vehicle Taxes

No tax or fee shall be payable in respect of registration or licensing for use in Ascension Island of motor vehicles, belonging to the Government of the United States of America and used for purposes connected directly with the establishment, maintenance or use of the Long Range Proving Ground.

ARTICLE XIV

Customs Duties and Other Taxes on Goods

(1) No import, excise, consumption or other tax, duty or impost shall be charged on:

(a) material, equipment, supplies or goods for use in the establishment, maintenance or use of the Long Range Proving Ground consigned to, or destined for, the United States authorities or a contractor;

(b) goods for use or consumption aboard United States public vessels or aircraft of the Army, Navy, Air Force, Coast Guard or Coast and Geodetic Survey;

(c) goods consigned to the United States authorities or to a contractor of the United States for the use of institutions under the control of the United States authorities or United States contractors known as Post Exchanges, Navy Exchanges, Commissary Stores, Service Clubs, Contractors' Messes and Recreational Facilities, or for sale thereat to members of the United States Forces, civilian employees of the United States or contractors' employees, being nationals of the United States and employed in connection with the Long Range Proving Ground,

or members of their families resident with them and not engaged in any business or occupation in Ascension Island;

(d) the personal belongings or household effects, provided that such belongings or effects accompany the owner or are imported either (i) within a period beginning 60 days before and ending 120 days after the owner's arrival or (ii) within a period of 6 months immediately following his arrival, of persons referred to in sub-paragraph (c) of this Article and of contractors and their employees being nationals of the United States employed in the establishment, maintenance or use of the Long Range Proving Ground and present in Ascension Island by reason only of such employment.

(e) goods for consumption and goods (other than personal belongings and household effects) acquired after first arrival, including gifts, consigned to members of the United States Forces or civilian employees of the United States being nationals of the United States and employed in connection with the Long Range Proving Ground or members of their families resident with them and not engaged in any business or occupation in Ascension Island provided that such goods are:

(i) of United States origin if the Government of Ascension Island so require, and

(ii) imported for the personal use of the recipient.

(2) No export tax shall be charged on the material, equipment, supplies or goods mentioned in paragraph (1) in the event of reshipment from Ascension Island.

(3) This Article shall apply notwithstanding that the material, equipment, supplies or goods pass through other parts of Ascension Island en route to or from a Site.

(4) The United States authorities shall do all in their power to prevent any abuse of customs privileges and shall take adminis-

trative measures, which shall be shown and explained to the appropriate local authorities, to prevent the disposal, whether by resale or otherwise, of goods which are used or sold under paragraph (1) (c), or imported under paragraph (1) (d) or (e), of this Article, to persons not entitled to buy goods at the institutions referred to in the said paragraph (1) (c) or not entitled to free importation under the said paragraph (1) (d) or (e). There shall be cooperation between the United States authorities and the Government of Saint Helena to this end, both in prevention and in investigation of cases of abuse.

ARTICLE XV

Taxation

(1) No member of the United States Forces or national of the United States, serving or employed in Ascension Island in connection with the establishment, maintenance or use of the Long Range Proving Ground, and residing in Ascension Island by reason only of such employment, or his wife or minor children, shall be liable to pay income tax in Ascension Island except in respect of income derived from Ascension Island.

(2) No such person shall be liable to pay in Ascension Island any poll tax or similar tax on his person, or any tax on ownership or use of property which is within a Site, or situated outside Ascension Island.

(3) No person ordinarily resident in the United States shall be liable to pay income tax in Ascension Island in respect of any profits derived under a contract made in the United States with the Government of the United States of America in connection with the establishment, maintenance or use of the Long Range Proving Ground, or any tax in the nature of a license in respect of

any service or work for the Government of the United States of America in connection with the establishment, maintenance or use of the Long Range Proving Ground.

ARTICLE XVI

Postal Facilities

The Government of the United States of America shall have the right to establish United States Military Post Offices in the Sites for the exclusive use of the United States Forces, and civilian personnel (including contractors and their employees) who are nationals of the United States and employed in connection with the establishment, maintenance or use of the Long Range Proving Ground and the families of such persons for postal services between the United States Military Post Offices so established and other United States Post Offices.

ARTICLE XVII

Health Measures in the Vicinity of the Sites

The Government of the United States of America shall have the right, in collaboration with the Government of Saint Helena, and, where necessary, with any local authority concerned, to exercise, without other consideration than adequate and effective compensation to be paid by the Government of the United States of America to private owners or occupiers, if any, such powers as such Government and local authority may possess of entering upon any property in the vicinity of the Sites for the purpose of inspection, and of taking any necessary measures to improve sanitation and protect health.

Article XVIII

Removal of Property

(1) The title to any property placed on the Sites (including property affixed to the realty) and provided by the Government of the United States of America for the purposes of this Agreement shall remain in the Government of the United States of America.

(2) At any time before the termination of this Agreement or within a reasonable time thereafter, such property may, at the discretion of the Government of the United States of America, be

(a) relocated within the Sites, or

(b) removed therefrom, or

(c) disposed of while on a Site on the condition (unless otherwise agreed between the Government of Saint Helena and the United States authorities) that it shall forthwith be removed therefrom.

(3) Any ground from which such property is so removed shall, if the Government of Saint Helena so require, be restored as far as possible to its present condition by the Government of the United States of America.

(4) The Government of the United States of America will not, in Ascension Island, dispose of any such property

(a) without the consent of the Government of Saint Helena, or

(b) without offering the property for sale to that Government, if such offer is consistent with laws of the United States of America then in effect, or

(c) before the expiration of such period, not being less than 120 days after the date of such offer, as may be reasonable in the circumstances.

(5) Such property may be exported by the United States authorities free from any license, export tax, duty or impost.

(6) Any such property not removed or disposed of as aforesaid within a reasonable time after the termination of this Agreement, shall become the property of the Government of Saint Helena.

ARTICLE XIX

Rights to be Restricted to the Purposes of the Agreement

Neither the Government of the United States of America nor the United States authorities shall exercise any rights granted by this Agreement, or permit the exercise thereof, except for the purposes specified in this Agreement.

ARTICLE XX

Rights Not to be Assigned

Neither the Government of the United States of America nor the United States authorities shall assign or part with any of the rights granted by this Agreement.

ARTICLE XXI

Liaison

The senior British representative posted to the Long Range Proving Ground and the senior member of the United States

Armed Forces detailed to the said Proving Ground shall jointly decide the details of the execution of this Agreement in its application to specific situations, in the best interests of all concerned. The said senior British representative shall be responsible for undertaking negotiations with the Government of Saint Helena in this connection.

Article XXII

Claims of Compensation

(1) The Government of the United States of America undertakes to pay adequate and effective compensation, which shall not be less than the sum payable under the law of Ascension Island, and to indemnify the Government of the United Kingdom and the Government of Saint Helena and all other authorities, corporations and persons in respect of valid claims arising out of:

(a) the death or injury of any person, except persons employed by the Government of the United Kingdom in connection with the Long Range Proving Ground, resulting from the establishment, maintenance or use of the Government of the United States of America of the extension of the Long Range Proving Ground effected by this Agreement;

(b) damage to property resulting from any action of the Government of the United States of America in connection with the establishment, maintenance or use of the extension of the Long Range Proving Ground effected by this Agreement;

(c) the acquisition of private property or of rights affecting private property (other than such property or rights acquired under Article III or Article IV) to enable any rights of the Government of the United States of America under this Agreement to be exercised.

(2) Compensation payable under sub-paragraph (1) (c) of this Article shall be assessed in accordance with the law of Ascension Island.

(3) For the purpose of this Article the law of Ascension Island shall be the law in force at the time of the signature of this Agreement, provided that any subsequent alteration of the said law shall have effect if the Contracting Governments so agree.

ARTICLE XXIII

Freedom from Rents and Charges

Except as provided in Articles XVII and XXII the Sites shall be provided, and the rights of the Government of the United States of America under this Agreement shall be made available, free from all rent and charges to the Government of the United States of America.

ARTICLE XXIV

Modification of the Agreement

Modification of this Agreement shall be considered by the Contracting Governments in the light of any modification of the Agreement between the Governments of the United States of America and the United Kingdom relating to the Bases leased to the United States of America dated March 27, 1941, which may be made under Article XXVIII of that Agreement.

ARTICLE XXV

Implementation of the Agreement

(1) The Government of the United States of America and the Government of Saint Helena respectively will do all in their power to assist each other in giving full effect to the provisions of this Agreement according to its tenor and will take all appropriate steps to that end.

(2) During the period for which this Agreement remains in force, no laws of Ascension Island which would derogate from or prejudice any of the rights conferred on the Government of the United States of America by this Agreement shall be applicable within the Range Area, save with the concurrence of the Government of the United States of America.

ARTICLE XXVI

Final Provisions

This Agreement shall come into force on the date of signature and shall continue in force until July 20, 1975, and thereafter until one year from the day on which either Contracting Government shall give notice to the other of its intention to terminate the Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

DONE at Washington, in duplicate, this twenty-fifth day of June, 1956.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

JOHN FOSTER DULLES

FOR THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND:

ROGER MAKINS

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 833

LYON TYLER MATTHEW AND LEWIS N. HILL,
PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

The only issue in this case is whether petitioners [1] were "bona fide residents" of a foreign country within the ambit of Section 911(a)(1) of the Internal Revenue Code of 1954—and therefore non-taxable with respect to their salaries—while working as employees of Pan American Airways at various United States Auxiliary Air Force Bases on British islands in the

[1] The cases of three separate taxpayers—the petitioners Matthew and Hill and taxpayer Holland F. Floyd—were consolidated on appeal in the court below (R. 431–434). Floyd has not petitioned for certiorari.

Atlantic Ocean,[2] which had been established as integral parts of the United States Long Range Missile Test Center, under treaties entered into between the United States and the United Kingdom (Exs. ID and Z; Pet. 25–48, 55–79).[3] Finding that the taxpayers were on the islands solely because of their employment and enjoyed very substantial "extra-territorial rights, privileges, and immunities" which "set them apart from the general community," the court below concluded that their "physical presence [was kept] from ripening into actual residence in a foreign country" within the meaning of Section 911(a)(1) (Pet. 18). Summarizing its holding, the court said (Pet. 19):

> Whether for 20 days or for 20 years, employment under the arrangement authorized by such

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[2] Petitioner Matthew, during 1956 and 1957, worked at Auxiliary Air Force Bases on San Salvador Island, Grand Bahama Island and Ascension Island. Petitioner Hill, during 1956, 1957, and 1958, worked at Auxiliary Air Force Bases on Grand Bahama Island and Mayaguana Island. Neither of these petitioners, nor taxpayer Floyd during the years involved in the case at bar, had worked at the Auxiliary Air Force Base on Antigua Island, to which petitioners make reference (Pet. 4). San Salvador, Grand Bahama, and Mayaguana are sparsely populated islands of the Bahamas; Ascension Island is part of the St. Helena group in the South Atlantic. See Pet. 12–13, n. 5.

[3] Pursuant to an order of the court below (R. 431–434), the "exhibits need not be printed in the record on review herein but may be referred to by counsel in their respective briefs and on oral argument * * * and considered by the Court with the same force and effect as if included in the printed record on review." The treaties involved are printed as appendices to the petition (Pet. 25–79); at the government's request, the other exhibits have been transmitted to this Court in order that this Court may have the full record upon which the decision of the court below was based.

> a treaty could not amount to residence *in* a foreign country, no matter how bona fide the *presence* might be.

The ruling below is plainly correct.[4] Nor is there a conflict in decisions which requires resolution. The only other case directly in point expressly follows the ruling here. *Baden* v. *United States,* 233 F. Supp. 185 (N.D. Ohio), no appeal taken. The claim of con-

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[4] While the opinion does not emphasize it, those in petitioners' situation were subjected to special restrictions while employed in the islands. The restrictions are embodied in Regulations promulgated by the United States Air Force (Exs. J and N), contracts entered into between the United States Air Force and Pan American Airways, Inc. (Exs. S and T), "Down Range Planning Briefs" prepared by the Guided Missile Range Division of Pan American Airways (Ex. AA), instructions given by Pan American Airways, Inc. to its employees of Guided Missile Range Division (Exs. CC, FF, GG, II, JJ), a "Down Range Handbook" issued by Pan American World Airways, Inc., to its employees of Guided Missile Range Division, which summarized the working conditions together with the rights and restrictions which it had imposed upon its employees who were assigned to the island missile bases (Ex. JJJ), and in a publication of United States Air Force Missile Test Center which set forth the role of the island missile bases in the security of the United States and in the development of intercontinental ballistic missiles (Ex. LLL). Each of the petitioners, as a condition of his employment did, in writing, agree to comply with and be bound by these restrictions (Ex. JJ, YY).

It is also noteworthy that the presence of each petitioner on these British islands was only co-terminus with his employment at a United States Auxiliary Air Force Base, as an employee of Pan American Airways, Inc., which employment could be terminated at will, without cause (Ex. JJ, YY), and that it was the obligation of the United States, within a reasonable time after employment was terminated, not only to provide for the employee's passage from the British island to the United States, but also "in the meantime prevent his becoming a public responsibility" of the island (Ex. Z).

flict with decisions in this Court dealing with court-martial jurisdiction over civilian employees of the Armed Forces abroad (Pet. 8–9) is frivolous. Those cases ruled that a *constitutional* bar prevented the military trial of civilians; here, the only question is whether a *statutory* tax exemption extends to certain foreign-based personnel. The issues do not touch.

The petition for certiorari should be denied.

Respectfully submitted.

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FEBRUARY 1965.

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